

REMARKS/ARGUMENTS

Favorable reconsideration of this application is requested in view of the amendments above and the remarks which follow.

DISPOSITION OF CLAIMS

Claims 1-10 and 13-36 are pending in this application. Claims 11 and 12 have been canceled. Claims 2, 3, 14-16, and 25-36 are withdrawn from consideration due to a restriction requirement.

REJECTIONS UNDER 35 U.S.C. §102

I. Claims 1, 4, and 10 stand rejected under 35 USC 102(b) as being anticipated by U.S. Patent No. 5,897,874 (Stevens et al). Reconsideration of this rejection is respectfully requested.

Stevens et al do not disclose, “an expandable osmotic composition positioned within an opening of the reservoir, with the reservoir and the opening configured such that the expandable osmotic composition is not completely encapsulated by the reservoir,” as recited in claim 1. Because Stevens et al do not disclose all the limitations of claim 1, Stevens et al cannot anticipate claim 1. Similarly, claims 4 and 10, because of their dependence from claim 1, are not anticipated by Stevens et al. Withdrawal of the rejection of claims 1, 4, and 10 in view of Stevens et al is respectfully requested.

II. Claims 1, 4, 10-13, 17, 23, and 24 stand rejected under 35 USC 102(b) as being anticipated by U.S. Patent No. 5,312,390 (Wong). Claims 11 and 12 have been canceled. Accordingly, the rejection of claims 11 and 12 is moot. Reconsideration of the rejection of claims 1, 4, 10, 13, 17, 23, and 24 is respectfully requested.

Wong does not disclose, “an expandable osmotic composition positioned within an opening of the reservoir, with the reservoir and the opening configured such that the expandable osmotic composition is not completely encapsulated by the reservoir,” as recited in claim 1. Wong does not disclose, “an expandable composition positioned within the opening of the

reservoir such that at least a portion of the expandable composition is not enclosed by the reservoir,” as recited in claim 13.

As described on page 9, lines 1-5, of the specification as originally filed, “it has been found that the high level of osmotic activity of osmotic compositions included in previous dosage forms designed for the controlled release of liquid formulations can dehydrate the enclosing capsule or reservoir forming materials to such a degree that the material becomes brittle, cracks, or is otherwise structurally compromised.” With the arrangement of expandable osmotic composition and reservoir recited in claims 1 and 13, contact between the expandable osmotic composition and the reservoir can be minimized, thereby improving the structural stability of the dosage form over time.

The Examiner asserts that the first expansion means (20) is not completely encapsulated by the first housing (12) and cap (50) since portions of the surface are open by the screen (46). It is clear that a first object is completely encapsulated by a second object if the first object is completely positioned within the second object. There is nothing about the phrase “completely encapsulated” that suggests that the second object which encapsulates the first object could not have pores. It is noted herein that Wong teaches that screen (46) is molded or otherwise formed as a continuous portion of the first housing (12) (col. 5, lines 26-27). Therefore, it is reasonable to conclude from the disclosure of Wong that the screen (46) is part of the first housing (12) and that the first housing (12) and cap (50), which define the reservoir for containing an active agent formulation (22), completely encapsulate or enclose the first expansion means 20.

Because Wong does not disclose all the limitations of claims 1 and 13, considered separately, Wong cannot anticipate claims 1 and 13. Similarly, claims 4, 10, 17, 23, and 24, because of their dependence from claim 1 or 13, are not anticipated by Wong. Withdrawal of the rejection of claims 1, 4, 10, 13, 17, 23, and 24 in view of Wong is respectfully requested.

REJECTIONS UNDER 35 U.S.C. §103

I. Claims 8-9 and 21-22 were rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 5,312,390 (Wong) in view of WO 00/35419 (Dong). Reconsideration of this rejection is respectfully requested.

Claims 8-9 depend from claim 1, and claims 21-22 depend from claim 13.

As discussed above, Wong does not disclose or teach, “an expandable osmotic composition positioned within an opening of the reservoir, with the reservoir and the opening configured such that the expandable osmotic composition is not completely encapsulated by the reservoir,” as recited in claim 1. Also, Wong does not disclose or teach, “an expandable composition positioned within the opening of the reservoir such that at least a portion of the expandable composition is not enclosed by the reservoir,” as recited in claim 13. Dong also fails to overcome the deficiency in Wong. Accordingly, Wong combined with Dong cannot render claims 1 and 13 obvious.

From the foregoing, claims 8-9 and 21-22, because of their dependence from claim 1 or 13, are not obvious over Wong in view of Dong. Withdrawal of the rejection of claims 8-9 and 21-22 over Wong in view of Dong is respectfully requested.

II. Claims 5-7 and 18-20 were rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 5,312,390 (Wong) in view of U.S. Patent No. 5,672,359 (Digenis). Reconsideration of this rejection is respectfully requested.

Claims 5-7 depend from claim 1, and claims 18-20 depend from claim 13.

As discussed above, Wong does not disclose or teach, “an expandable osmotic composition positioned within an opening of the reservoir, with the reservoir and the opening configured such that the expandable osmotic composition is not completely encapsulated by the reservoir,” as recited in claim 1. Wong does not disclose or teach, “an expandable composition positioned within the opening of the reservoir such that at least a portion of the expandable composition is not enclosed by the reservoir,” as recited in claim 13. Digenis also fails to overcome the deficiency in Wong. Accordingly, Wong combined with Digenis cannot render claims 1 and 13 obvious.

From the foregoing, claims 5-7 and 18-20, because of their dependence from claim 1 or 13, are not obvious over Wong in view of Digenis. Withdrawal of the rejection of claims 5-7 and 18-20 over Wong in view of Digenis is respectfully requested.

CONCLUSION

Applicant believes that this paper is fully responsive to the Office Action dated January 18, 2007.

Please apply any charges not covered or credits in connection with this filing to Deposit Account No. 50-3202 (ref. ARC 3251 R1).

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Respectfully submitted,

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